



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

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In Reply Refer to:
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EMS TRANSMISSION: 5/30/14
Instruction Memorandum No. CA-2014-021
Expires: 9/30/2015

To: NORCAL District Manager and Field Managers

From: State Director

Subject: Direction Regarding the Survey and Manage Mitigation Measure as a Result of Court Ruling in *Conservation Northwest et al v. Bonnie et al.*, Case No. 08-1067-JCC (W.D. Wash.)

Purpose: On February 18, 2014, the District Court for the Western District of Washington issued a remedy order in the case of *Conservation Northwest et al. v. Bonnie et al.*, No. 08-1067-JCC (W.D. Wash.)/No.11-35729 (9th Cir.). This was the latest step in the ongoing litigation challenging the 2007 Record of Decision to modify the Survey and Manage Standards and Guidelines. The remedy order contains two components:

- 1) the vacatur of BLM's 2007 Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Resource Management Plans; and
- 2) to allow the Forest Service and the Bureau of Land Management (BLM) to continue developing and implementing projects that met the previous 2011 Consent Decree exemptions or species list, as long as certain criteria were met and were being developed or implemented on or before April 25, 2013 (date of the Ninth Circuit Court ruling invalidating the 2011 Consent Decree).

This instruction memorandum (IM) is to: (1) detail direction regarding what Survey and Manage species lists to use for new NEPA and decision documents; (2) detail what types of actions meet the criteria set forth in the February 18, 2014, court order to allow use of the 2011 Consent Decree; and (3) to provide language to be included in the National Environmental Policy Act (NEPA) documents (attachment).

Policy/Action: Vacatur of the 2007 ROD has the effect of returning the management direction within the Northwest Forest Plan area to the level which existed prior to the 2007 RODs.

Specifically, this direction was defined by three previous legal rulings where:

- 1) Judge Pechman reinstated the 2001 ROD, including any amendments or modifications to the 2001 ROD that were in effect as of March 21, 2004 (CV-04-00844-MJP, 1/9/2006). This ruling incorporated the 2001, 2002, and 2003 Annual Species Reviews (ASRs).
- 2) Judge Pechman ordered four categories of projects exempt from compliance with the S&M standards and guidelines (CV-04-00844-MJP, 10/11/2006, “Pechman exemptions”).
- 3) The Ninth Circuit Court of Appeals in *KSWC et al. v. Boody et al.*, 468 F3d 549 (9th Cir. 2006) vacated the 2001 ASR category change and 2003 ASR removal for the red tree vole in the mesic zone, returning the species to Category C throughout its’ range.

In summary, the management direction existing before the 2007 RODs were signed consists of:

- 1) following the 2001 S&M ROD and Standards and Guidelines,
- 2) applying the “Pechman” exemptions, and
- 3) implementing the 2001, 2002, and 2003 Annual Species Review modifications to the Survey and Manage species list, except for the changes made for the red tree vole.

Over the years since the 2007 RODs were signed, the BLM Districts have been directed to use a variety of Survey and Manage species lists in response to ongoing litigation. With the District Court’s most recent order in that litigation, the following represents new direction on the appropriate species lists to use. Despite which species list is used, it is still necessary to implement the site-specific species requirements. Management recommendation documents can be found at <http://www.blm.gov/or/plans/surveyandmanage/recommendations/>.

For new Project Decisions, one of the two species lists should be utilized:

1. The 2001 ROD List with the appropriate ASRs (Attachment 1)

The Ninth Circuit Court of Appeals vacated the 2003 category change and removal of the red tree vole in the mesic zone which reverted its status to that which existed in the 2001 ROD S&Gs.

2. 2011 Consent Decree (Settlement Agreement) list (Attachment 2)

To utilize the 2011 Consent Decree (Settlement Agreement) list, your project **must** have been initiated **before** April 25, 2013, **and must** meet one of three criteria:

1. projects in which any Survey and Manage pre-disturbance survey(s) has been initiated (defined as at least one occurrence of actual in-the-field surveying undertaken according to applicable protocol) in reliance upon the Consent Decree on or before April 25, 2013;
2. projects, at any stage of project planning, in which any known site(s) (as defined by the 2001 Record of Decision) has been identified and has had known site-management recommendations for that particular species applied to the project in reliance upon the Consent Decree on or before April 25, 2013, and
3. projects, at any stage of project planning, that the Agencies designed to be consistent with one or more of the new exemptions contained in the Consent Decree on or before April 25, 2013.

Clearly indicate in your NEPA and decision documentation what list of species was utilized for the project. If using the 2011 Consent Decree, the project file should have clear documentation that the project meets at least one of the criteria listed. Attachment 3 contains suggested language that could be used in NEPA documents where a Pechman exemption is applied, the 2001 ROD list of species is used, including ASRs, or when applying the 2011 Settlement Agreement list.

Survey Protocols and Management Recommendations (including Conservation Assessments, Strategies, and Species Fact Sheets) and BLM sensitive species lists created previously are still valid, and are unaffected by any of these recent Survey and Manage court rulings.

The 2001 ROD may be viewed at <http://www.reo.gov/library/reports/RODjan01.pdf>.

The Survey and Manage website may be viewed at <http://www.blm.gov/or/plans/surveyandmanage/>

Timeframe: Effective immediately.

Budget Impact: None anticipated.

Background: On December 2009, the District Court for the Western District of Washington issued an order on partial summary judgment in favor of the Plaintiffs finding inadequacies in the NEPA analysis supporting the *Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (BLM et al. 2007) (2007 ROD). The District Court did not issue a remedy or injunction at that time. The BLM issued interim direction through Information Memorandum OR-2010-017 in light of the District Court's partial summary judgment order.

Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement, adopted by the District Court on July 6, 2011. The BLM issued direction regarding implementation of this settlement agreement through Information Memorandum OR-2011-063.

The Defendant-Intervener subsequently appealed the 2011 Settlement Agreement to the Ninth Circuit Court of Appeals. The April 25, 2013, ruling in favor of Defendant-Intervener remanded the case back to the District Court. On February 18, 2014, the District Court vacated the 2007 Records of Decision to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines (2007 RODs). Vacatur of the 2007 RODs has the result of returning the BLM to the status quo in existence prior to the 2007 RODs, which includes the use of the 2001, 2002, and 2003 Annual Species Reviews (except the change/removal made for the red tree vole) and the "Pechman" exemptions.

Manual/Handbook Sections Affected: The BLM National Environmental Policy Act Handbook H-1790-1.

Coordination: These policies have been coordinated and reviewed by the Deputy State

Director, CA930, Division of Natural Resources; CA360 Fish and Wildlife Biologist; and CA330 Botanist.

Contact: For questions contact Jeremiah Karuzas (916) 978-4644, Gary Diridoni (530) 224-2184, or Jennifer Wheeler (707) 825-2316.

Districts with Unions are reminded to notify their unions of this IM and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by:
James V. Scrivner
Acting State Director

Authenticated by:
Richard A. Erickson
Records Management

Attachments – 3

- 1 – 2003 Survey and Manage Standards and Guidelines and Category Assignment (7 pp)
- 2 – 2011 Consent Decree List (only to be used if project meets criteria) (8 pp)
- 3 – Suggested NEPA language (3 pp)

cc: CA310, CA 340, CA360